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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,045	09/26/2003	Stephen J. Brown	014030.0112N2US	8048

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PATTON BOGGS LLP
8484 WESTPARK DRIVE
SUITE 900
MCLEAN, VA 22102

EXAMINER

CHENG, JOE H

ART UNIT	PAPER NUMBER
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3715

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/673,045	BROWN ET AL.	
	Examiner	Art Unit	
	Joe H. Cheng	3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-48, 50-52, 54-62, 64, 65 and 67-85 is/are pending in the application.
- 4a) Of the above claim(s) 20-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48, 50-52, 54-62, 64, 65 and 67-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/17/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In response to the Amendment filed on October 17, 2005, claims 1-19, 49, 53, 63 and 66 have been cancelled; claims 20-48, 50-52, 54-62, 64, 65 and 67-74, and the newly added claims 75-85 are pending. In addition, claims 20-47 are withdrawn from further consideration as being drawn to the nonelected invention. Further, applicant is informed that the references cited in the Information Disclosure Statement filed on October 17, 2005; which are crossed out by the Examiner, have not been considered by the Examiner, because these documents are the duplicate of the references either cited by the Examiner (PTO-892) or by the applicant (PTO-1994) (see Paper No. 20050601).

Specification

2. The disclosure is objected to because of the following informalities:

The term "This application is a Continuation of application Ser. No. 09/971,785, filed Oct. 4, 2001, now abandoned, which is a Continuation of application Ser. No. 09/119,546 filed Jul. 20, 1998, now U.S. Pat. No. 6,330,426 B2, which is a Continuation-In-Part of application Ser. No. 08/953,883 filed Oct. 20, 1997, now abandoned, which is a Continuation-In-Part of application Serial No. 08/757,129 filed Dec. 3, 1996, now U.S. Patent No. 6,144,837, which is a Continuation-In-Part of U.S. application Ser. No. 08/334,643 filed Nov. 4, 1994, now U.S. Pat. No. 5,601,435; and the present application is also a Continuation of application Ser. No. 09/119,546 filed Jul. 20, 1998, now U.S. Pat. No. 6,330,426 B2 which is a Continuation of application Ser. No. 08/958,786, filed Oct. 29, 1997, now U.S. Pat. No. 5,913,310, issued Jun. 22, 1999, which is a Continuation-In-Part of application Ser. No. 08/857,187, filed May 15,

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1997, now U.S. Patent No. 5,918,603, which is a Divisional of application Ser. No. 08/247,716, filed May 23, 1994, now U.S. Pat. No. 5,678,571. All of the above applications are herein incorporated by reference.” on page 1, lines 14 to page 2, line 3 should be recited as --This application is a Continuation of application Serial No. 09/971,785, filed October 4, 2001, now abandoned, which is a Continuation of application Serial No. 09/119,546, filed July 20, 1998, now U.S. Patent No. 6,330,426 B2, which is a Continuation-In-Part of application Serial No. 08/953,883, filed October 20, 1997, now abandoned, which is a Continuation-In-Part of application Serial No. 08/757,129, filed December 3, 1996, now U.S. Patent No. 6,144,837, which is a Continuation-In-Part of application Serial No. 08/334,643, filed November 4, 1994, now U.S. Patent No. 5,601,435; and the application Serial No. 09/971,785, filed October 4, 2001, now abandoned, is also a Continuation of application Serial No. 08/958,786, filed October 29, 1997, now U.S. Patent No. 5,913,310, which is a Continuation-In-Part of application Serial No. 08/857,187, filed May 15, 1997; now U.S. Patent No. 5,918,603, which is a Continuation of application Serial No. 08/247,716, filed May 23, 1994, now U.S. Patent No. 5,678,571. All of the above applications are herein incorporated by reference.--. Appropriate correction is required.

Claim Objections

3. Claims 50, 51, 54, 58, 61, 62, 64, 67, 71, 74, 75, 80 and 85 are objected to because of the following informalities: The terms “includes;”, “glucose level;”, “multimedia processor;” (as per claim 50), “blood level” (as per claim 51), “health monitoring system” (as per claim 54), “user including a comparison of user measurements with previously stored measurements” (as per

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claim 58), “display is” (as per claim 61), “reproduction at a display device”, “monitor a display device including a display screen;”, “visual and audio provision of the health related information to the user,” (as per claim 62), “blood glucose level;”, “acceptable to the multimedia processor;” (as per claim 64), “health monitoring method.” (as per claim 67), “user includes a comparison of user measurements with previously stored measurements.” (as per claim 71), “wherein the visual signals are reproduced on a television” (as per claim 74), “user’s input.” (as per claim 75), and “display device” (as per claims 80 and 85) should be respectively recited as --includes:--, --glucose level from the at least one physiological data monitor;--, --a multimedia processor of the interface;--, --blood glucose--, --monitoring system--, --user further includes a comparison of measurements of the blood glucose level with previously stored measurements of the blood glucose level--, --display device is--, --reproduction at a display screen of a display device--, --monitor of an interface--, --visual and audio signals of the health related information to the user; and--, --blood glucose level from the at least one physiological data monitor;--, --acceptable to a multimedia processor of the interface;--, --monitoring method.--, --user further includes a comparison of measurements of the user physiological parameter with previously stored measurements of the user physiological parameter--, --wherein the display device is a television and wherein the visual signals are reproduced on the television--, --user input, so as to provide health related information to the user in an interactive manner.--, and --audio speaker--, so as to clarify the confusion.

Claim Rejections - 35 USC § 102

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 48, 50-52, 54-56, 60, 62, 64, 65, 67-69, 73, 75, 79-81, 84 and 85 are rejected under 35 U.S.C. 102(b) as being anticipated by Beckers (U.S. Pat. No. 5,019,974). The teaching of Beckers broadly discloses the system and method for interactively monitoring a blood glucose level and for interactively providing health-related information comprising a blood glucose monitor (60) adapted to measure a blood glucose level of a user, a processor (30) for receiving a second signal that is a function of the first signal from the interface (column 2, lines 18-20 and from column 9, line 25 to column 10, line 52), the interface having the signal receiver, the converter (106, 107) and the multimedia processor (100) for utilizing at least isolate electrically or optical isolation between the blood glucose monitor and the processor, a memory (32, 34, 44) for storing blood level data, the hand-held program controller (Fig. 1) for providing the control signal to the processor based upon the user's input through at least one push button switch (10-21) for making selections to control the functions of the system, a display device including the display screen (54) and the audio speaker (column 3, lines 67-68) for displaying a representation of the blood glucose level data, so as to provide health related information to an user in an interactive manner.

Claim Rejections - 35 USC § 103

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 57-59, 61, 70-72, 74, 76-78, 82 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beckers (U.S. Pat. No. 5,019,974) in view of Brown (U.S. Pat. No. 5,678,571). It is noted that the teaching of Beckers does not specifically disclose the television display (as per claims 61, 74 and 77), the moving images (as per claims 57 and 70), the video game console (as per claims 76 and 82), and the removable memory (as per claims 61 and 74) or the CD-ROM drive and compact disk (as per claims 78 and 83) as required. However, the teaching of Brown broadly discloses that such features of the video game console (Fig. 9) having the CD-ROM drive and compact disk (column 4, lines 48-55), and the television display (column

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4, line 38) for displaying the moving images thereon are old and well known. Hence, it would have been obvious to one of ordinary skill in the art to modify the system and method of Beckers with the features of the television display, the moving images, the video game console, and the CD-ROM drive and compact disk as taught by Brown as both Beckers and Brown are directed to the system and method for interactively monitoring a glucose level and for interactively providing health-related information, so as to provide the treatment methods based on the computer-generated video games.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 48, 50-52, 54-56, 60, 62, 64, 65, 67-69, 73 and 75-85 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8, 10-12 and 14-30 of U.S. Patent No. 5,601,435 (hereinafter as *Quy'435*) or claims 1-27 of U.S. Patent No. 6,144,837 (hereinafter as *Quy'837*) in view of Beckers (U.S. Pat. No.

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5,019,974). It is noted that the teachings of Quay'435 or Quay'837 do not specifically disclose the blood glucose monitor (as per claims 48, 51, 62, 75 and 81), the program controller is hand-held (as per claims 55 and 68) and at least one push button switch (as per claims 56 and 69) as required. However, the teaching of Beckers broadly discloses that such features of the blood glucose monitor (60), the program controller is hand-held (Fig. 1) and at least one push button switch (10-21) are old and well known. Hence, it would have been obvious to one of ordinary skill in the art to modify the system of Quay'435 or Quay'837 with the features of the blood glucose monitor, the program controller is hand-held and at least one push button switch as taught by Beckers both Quay'435 or Quay'837 and Beckers are directed to the system and method for interactively monitoring a glucose level and for interactively providing health-related information, so as to provide the health-related information to the user based on the selection from the user.

11. Claims 57-59, 61, 70-72 and 74 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8, 10-12 and 14-30 of U.S. Patent No. 5,601,435 (hereinafter as Quay'435) or claims 1-27 of U.S. Patent No. 6,144,837 (hereinafter as Quay'837) in view of Beckers (U.S. Pat. No. 5,019,974) and further in view of Brown (U.S. Pat. No. 5,678,571). It is noted that the teachings of Quay'435 or Quay'837 and Beckers do not specifically disclose the moving images displayed on the display (as per claims 57 and 70) and the removable memory (as per claims 61 and 74) as required. However, the teaching of Brown broadly discloses that such features of displaying the moving images displayed on the display (Figs. 5-8) and the removable memory (i.e. the compact disk). Hence, it

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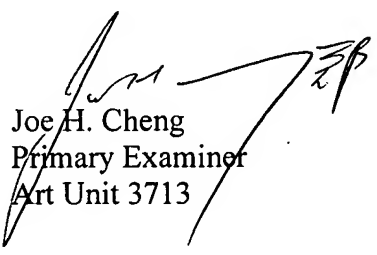
would have been obvious to one of ordinary skill in the art to modify the system of Quay'435 or Quay'837 and Beckers with the features of the moving images displayed on the display and the removable memory as taught by Brown as both Quay'435 or Quay'837, Beckers and Brown are directed to the system and method for interactively monitoring a glucose level and for interactively providing health-related information, so as to provide the video game based health-related information to the user.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joe H. Cheng whose telephone number is (571)272-4433. The examiner can normally be reached on Tue. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571)272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Joe H. Cheng
Primary Examiner
Art Unit 3713

Joe H. Cheng
March 24, 2006

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New Sheet

